

“Gross receipts” includes all the consideration received by a retailer for a retail sale. See 86 Ill. Adm. Code 130.2125. (This is a GIL.)

July 12, 2007

Dear Xxxxx:

This letter is in response to your letters dated October 12, 2006 and February 22, 2007 in which you request information. Please be aware that Mr. Boggess no longer works with the Department. We apologize for the delay in responding to your inquiry. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter of October 12, 2006, you have stated and made inquiry as follows:

This letter is to advise you that my dispute regarding sales tax collected on a truck I purchased remains unresolved. I had made a visit to the Illinois Department of Revenue and was advised by the tax payer [sic] assistance desk that I was to file an Amended Sales Tax Transaction Return ST-556-X.

Based on this advice I am enclosing the ST-556-X, and requesting a refund of \$147.44.

While I have enclosed the form as directed, I still want to follow up on my original inquiry, copy attached. I still would like to obtain a Private Letter Ruling.

In your response to my original inquiry in a correspondence dated November 29, 2005, You [sic] stated:

‘Our understanding of these transactions is that the dealer commission referenced in your letter is another form of rebate or reimbursement for the discount of which the dealer received consideration towards the purchase price of the vehicle and is fully subject to Retailer’s Occupational [sic] Tax’.

I fail to understand how a transaction between a manufacturer and a retailer becomes taxable to the customer. There are two clarifications I am seeking regarding the above response.

First, please provide me with the basis of 'our understanding'. Under the employee pricing programs, are you suggesting that the manufacturer provided 'reimbursement' to ABC specifically for my truck? Assuming that is true, would that not be taxable income to ABC? Is the State of Illinois improperly collecting sales tax from customers and not the car dealers or manufacturers?

Your letter referenced Title 86, Part 130, Section 2125. This section is titled: Trading Stamps and Discount Coupons. Please be advised that I did not use a discount coupon when I purchased the truck. Accordingly, will you please explain how this section is relevant?

Even though there was not a 'discount coupon' issued or redeemed, I assume your letter referred me to review Section 130.2125 (b) as the dealers may be receiving reimbursement from the manufacturers for the discounted vehicle price. Based on review of this regulation, I assume you are reviewing [sic] to subsection 2. This section reads:

- 2) Where a [sic] retailer receives full or partial coupon reimbursement:
 - A) If a retailer allows a purchaser a discount from the seller [sic] price on the basis of a discount coupon for which the retailer will receive full or partial reimbursement (from a manufacturer, distributor or other source), the **retailer (emphasis added)** incurs Retailers' Occupational [sic] Tax liability on the receipts received from the purchaser and the amount of any of any [sic] coupon reimbursement. For example, if a retailer sells an item for \$15 and the purchaser provides the retailer with a \$5 manufacturer's coupon for which the retailer receives full reimbursement from the manufacturer of the item, the retailer's gross receipts of \$15 are subject to Retailers' Occupational [sic] Tax. Technically, the coupon issuer (the manufacturer in this example) owes the corresponding Use Tax on the value of the coupon. However, in many cases, the coupon issuer incorporates language into the coupon that requires the bearer (the purchaser in this example) to assume this Use Liability Tax [sic].

In my dispute, I will make the following arguments:

1. There was no discount coupon issued by XYZ, or ABC.
2. There was a discount of purchase price and that price was advertised without passing any tax liability to the purchasers.
3. Assuming that ABC received reimbursement from XYZ Manufacturing for the discount, would ABC or XYZ be liable for the Retailer's Occupational [sic] Tax

associated with the discount amount? The above regulation states that 'Technically' the coupon issuer owes the corresponding Use Tax.

REQUEST FOR PRIVATE LETTER RULING

I am formally requesting a Private Letter Ruling to ascertain which party is responsible for the Retailers' Occupational [sic] Tax, in relation to a vehicle I purchased from ABC on July 14, 2005. In addition, given that there was not a manufacturer's coupon issued or used in the transaction, I am requesting a ruling if any tax should have been collected on the discount amount.

I have enclosed a copy of my original letter that contains a statement of facts regarding my dispute. The letter also contained the original Sales Tax Transaction Return, Copy of Original Window Sticker, Copy of 'Discounted' Sticker, and computation of amount of sales tax in dispute.

Please be advised that there is no current litigation pending with the Illinois Department of Revenue regarding this matter. To the best of my knowledge, The Illinois Department of Revenue has not issued a ruling matter [sic] on my previous inquiry, or similar dispute.

I have stated the tax authority above and have outlined key arguments. However, I am requesting specifically the following ruling(s).

1. When a manufacturer offers a discount, without issuing a coupon, is there any tax liability incurred for the discount.
2. When a manufacturer offers a discount, without issuing a coupon, is taxpayer (purchaser) responsible of Sale [sic] tax on the discount given?
3. If the manufacturer provides reimbursement to the dealer for the discount given, and there is no coupon involved, who is responsible for the Retailer's Occupational [sic] Tax? Does the tax liability belong to the dealer or the manufacturer?

I am not aware of any authority that is contrary to my view that I have been overcharged on the sales tax associated with my truck purchase.

Please feel free to contact me if you have any questions are [sic] need any other documents regarding this request..

DEPARTMENT'S RESPONSE:

Sales taxes in Illinois are comprised of two separate complementary parts. The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. Illinois Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the

purchases occur outside Illinois, purchasers must self assess their Use Tax liability and remit it directly to the Department.

The Retailers' Occupation Tax Act imposes tax at the rate of 6.25% of gross receipts from sales of tangible personal property made in the course of business. 35 ILCS 120/2-10. "Gross receipts" are defined as "the total selling price or the amount of such sales, as hereinbefore defined." 35 ILCS 120/1. The Act further defines "selling price" or the "amount of sale" as "the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold," 35 ILCS 120/1. The result of the analysis of these definitions is that the amount subject to Retailers' Occupation Tax liability is the consideration for the sale received by the retailer. It does not limit the taxable amounts to consideration received directly from the purchaser, but includes any consideration for the sale provided from any source. The taxation of consideration from all sources is the basis for the Department's administrative rule regarding trading stamps and discount coupons. See 86 Ill. Adm. Code 130. 2125. Please note that the Second District Illinois Appellate Court in Ogden Chrysler Plymouth, Inc v. Bower, 348 Ill. App. 3d 944, 809 N.E.2d 792 (2nd Dist. 2004), recently confirmed that amounts paid to automobile dealers under employee discount programs are subject to Retailers' Occupation Tax liability. The court in Ogden noted, "the fact that the purchaser is not aware of the payments is of no import, as it does not act to separate the purchase from the payment." Ogden, 348 Ill. App. 3d at 953.

The Use Tax Act imposes tax on the privilege of using in this State tangible personal property purchased at retail from a retailer at the rate of 6.25% of the selling price of the tangible personal property or, in some instances, the fair market value of the tangible personal property, if any. 35 ILCS 105/3-10. The Use Tax Act defines "selling price" as "the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold," 35 ILCS 105/2. As the definition of selling price provides, the amount subject to tax is the consideration for the sale. The amount subject to tax is not limited to amounts paid directly by the purchaser, but includes amounts paid on behalf of the purchaser from other sources as consideration for the seller making the sale.

Claims for credit and refunds are available when a taxpayer shows that he paid tax to the Department as a result of a mistake of fact or law. See 86 Ill. Adm. Code 130.1501. If a retailer collects and remits to the Department tax on an item that should have been exempt as a sale for resale or under some other exemption, the retailer may file a claim for credit. This is true even if a valid Certificate of Resale or other exemption certificate is provided for items after the initial purchase and after tax has been paid. Only the remitter of the tax erroneously paid to the Department is authorized to obtain a credit. In order to obtain a credit, one must first demonstrate that he or she has borne the burden of the tax erroneously paid. The Department cannot approve any claim for credit unless the claimant clearly establishes that he or she has unconditionally repaid the amount of the tax to the person from whom he has collected the tax.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton
Senior Counsel, Sales & Excise Taxes

TDC:msk